

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 947

[Docket No. FV95-947-1FIR]

#### Oregon-California Potatoes; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Oregon-California Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** July 1, 1995, through June 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503-326-2724.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement

Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect Oregon-California potatoes are subject to assessments. Funds to administer the Oregon-California potato order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995-96 fiscal period, which began July 1, 1995, and ends June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of Oregon-California potatoes under this marketing order, and approximately 40 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Oregon-California Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on March 15, 1995, and unanimously recommended a budget of \$46,200, \$1,100 more than last season. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Annual report, \$1,500 (\$1,400), audit, \$1,000 (\$800), inspection fees, \$2,500 (\$2,000), and miscellaneous, \$600 (\$300). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of \$0.006 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 7,920,000 hundredweight, will yield \$47,520 in assessment income, which will be adequate to cover budgeted expenses.

Funds in the reserve on June 30, 1995, estimated at \$27,000, were within the maximum permitted by the order of one fiscal period's expenses.

An interim final rule was published in the **Federal Register** on June 6, 1995 (60 FR 29750). That interim final rule added § 947.246 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 6, 1995. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on July 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

#### **List of Subjects in 7 CFR Part 947**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

#### **PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY**

Accordingly, the interim final rule amending 7 CFR part 947 which was

published at 60 FR 29750, is adopted as a final rule without change.

Dated: July 21, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95–18478 Filed 7–26–95; 8:45 am]

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### **Commodity Credit Corporation**

#### **7 CFR Part 1427**

**RIN 0560–AD99**

#### **1995 Specifications for Cotton Bale Packaging Materials**

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations with respect to the price support loan programs for upland and extra long staple cotton which are conducted by the Commodity Credit Corporation (CCC) in accordance with the Agricultural Act of 1949 (the 1949 Act), as amended. The amendments made by this final rule will eliminate obsolete provisions and more appropriately reflect loan eligibility quality requirements for the 1995 and subsequent year crops.

**EFFECTIVE DATES:** July 27, 1995. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of July 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Philip Sharp, Program Specialist, Price Support Division, Consolidated Farm Service Agency, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7988.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by Office of Management and Budget (OMB).

##### **Federal Assistance Program**

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

##### **Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision

of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

##### **Environmental Evaluation**

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of human environment.

##### **Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

##### **Executive Order 12778**

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

##### **Paperwork Reduction Act**

The amendments to 7 CFR Part 1427 set forth in this final rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35. Existing information collections were approved by OMB, and assigned OMB control Numbers 0560–0087 and 0560–0129.

##### **Background**

Each year the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council in cooperation with the American Textile Manufacturers Institute, approves specifications for cotton bale packaging to be used as industry guidelines. Accordingly, this final rule amends § 1427.5(b)(2)(iii) to change the referenced year from 1994 to 1995 for the Specifications for Cotton Bale Packaging Materials published by the JCIBPC.

##### **List of Subjects in 7 CFR Part 1427**

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

#### **PART 1427—COTTON**

1. The authority citation for 7 CFR part 1427 continues to read as follows: